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SENATE BILL 3285

By Wilder

AN ACT to authorize the City of Piperton to levy and collect a privilege tax on new development.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This Act shall be known and cited as the "City of Piperton Adequate Facilities Tax".

SECTION 2. As used in this act, unless a different meaning appears from the context:

(a) "Building" means any structure built for the support, shelter, or enclosure of persons, chattels, or movable property of any kind; the term includes a mobile home.

This term will not pertain to buildings used for agricultural purposes.

(b) "Building Permit" means a permit for development issued in the City of Piperton.

(c) "Capital Improvement Program" means a proposed schedule of future projects, listed in order of construction priority, together with cost estimates and the anticipated means of financing each project. All major projects requiring the expenditure of public funds, over and above the annual local government operating expenses, for the

purchase, construction, or replacement of the physical assets of the community are included.

(d) "Certificate of Occupancy" means a license for occupancy of a building or structure issued in the City of Piperton.

(e) "Development" means the construction, building, reconstruction, erection, extension, betterment, or improvement of land providing a building or structure or the addition to any building or structure, or any part thereof, which provides, adds to or increases the floor area of a residential or non-residential use.

(f) "Dwelling Unit" means a room, or rooms connected together constituting a separate, independent housekeeping establishment for owner occupancy, rental or lease on a daily, weekly, monthly, or longer basis; physically separated from any other room(s) or dwelling units which may be in the same structure; and containing independent cooking and sleeping facilities.

(g)(1) "Floor Area" for non-residential development means the total of the gross horizontal area of all floors, including usable basement and cellars, below the roof and within the outer surfaces of the main walls of principal or accessory buildings or the center lines of party walls separating such buildings or portions thereof, or within lines drawn parallel to and two (2) feet within the roof line of any building or portions thereof without walls, but excluding arcades, porticoes, and similar open areas which are accessible to the general public, and which are not designed or used as sales, display, storage, service, or production areas.

(g)(2) "Floor Area" for residential development means the total gross horizontal area of all floors, including basements, cellars or attics which are heated and/or air-conditioned living space, or designed to be finished into heated and/or air-conditioned living space at a future date.

(h) "General Plan" means the official statement of the planning commission which sets forth major policies concerning future development of the jurisdictional area

and meeting the provisions set forth in Tennessee Code Annotated, Sections 13-3-301, 13-3-302, 13-4-201, and 13-4-202. For purposes of this act only, a general plan may consist solely of the land development plan element which sets out a plan or scheme of future land usage.

(i) "Governing Body" means the municipal legislative body of the City of Piperton, Tennessee.

(j) "Major Street or Road Plan" means the plan adopted by the planning commission, pursuant to Tennessee Code Annotated, Sections 13-3-402 and 13-4-302, showing, among other things, "the general location, character, and extent of public ways (and) the removal, relocation, extension, widening, narrowing, vacating, abandonment or change of use of existing public ways...".

(k) "Non-Residential" means the development of any property for any use other than residential use, except as may be exempted by this act.

(l) "Person" means any individual, firm, co-partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate or other group or combination acting as a unit, and the plural as well as the singular number.

(m) "Place of Worship" means that portion of a building, owned by a religious institution which has tax-exempt status, which is used for worship services and related functions; provided, however, that a place of worship does not include buildings or portions of buildings which are used for purposes other than for worship and related functions or which are or are intended to be leased, rented or used by persons who do not have tax-exempt status.

(n) "Public Building" means a building owned by the State of Tennessee or any agency thereof, a political subdivision of the State of Tennessee including, but not necessarily limited to, counties, cities, school districts and special districts, or the federal government or any agency thereof.

(o) "Public Facility or Facilities" means a physical improvement undertaken by the county or city, including, but not limited to, the following: roads and bridges, parks and recreational facilities, jails and law enforcement facilities, schools, libraries, government buildings, fire stations, sanitary landfills, water, wastewater and drainage projects, airport facilities and other governmental capital improvement benefiting the citizens of the county and/or city.

(p) "Residential" means the development of any property for a dwelling unit or units.

SECTION 3. It is the intent and purpose of this act to authorize the City of Piperton to impose a tax on new development in the City payable at the time of issuance of a building permit or certificate of occupancy so as to ensure and require that the persons responsible for new development share in the burdens of growth by paying their fair share for the cost of new and expanded public facilities made necessary by such development.

SECTION 4. Engaging in the act of development within the City of Piperton, except as provided in Section 6 herein, is declared to be a privilege upon which the City of Piperton may, by ordinance of the governing body, levy a tax in an amount set in such ordinance.

SECTION 5. The governing body shall impose the tax authorized herein by ordinance after adopting a capital improvements program indicating the need for the cost of public facilities anticipated to be funded, in part, by this tax and after finding that the need for such public facilities is reasonably related to new development in the municipality. The ordinance of the governing body imposing this tax shall state the rate of tax on new residential and non-residential development. The governing body shall, by ordinance, adopt administrative guidelines, procedures, regulations and forms necessary to properly implement, administer and enforce the provisions of this act.

SECTION 6. This act shall not apply to development of :

- (1) Public buildings.
- (2) Places of worship.

(3) Barns or outbuildings used for agricultural purposes.

(4) Replacement of buildings taken by eminent domain by any public body; replacement structures for previously existing buildings destroyed by fire, or other disasters or replacement on the same site of any building which either has had a privilege tax paid upon it, or has been utilized as a residence by the individual(s) making application for three (3) years immediately preceding the date of application for a building permit.

(5) Additions to a single-family dwelling.

(6) A structure owned by a non-profit corporation which is a qualified 501(c)(3) corporation under the Internal Revenue Code.

(7) Permanent residential structures replacing mobile homes where the mobile home is removed within thirty (30) days of the issuance of the certification of occupancy for the permanent residential structure; provided that the permanent structure is a residence for the owner and occupant of the mobile home and that the owner and occupant has resided on the property for a period of not less than three (3) years.

(8) Buildings which either have previously had a privilege tax paid upon them, or which have been continuously occupied by the individual(s) making application for three (3) years immediately preceding the date of application for a building permit, and which are moved from one site within the municipality to another site within the municipality, provided that no new building replaces the building being moved. If a new building is to be placed on the site, then the person(s) having: (1) paid the privilege tax for the building which originally occupied the site, or (2) otherwise qualified in accordance with provisions herein for exemption from paying the privilege tax, will be given first right to the exemption. Payment of privilege tax would take precedence. The other building would then be required to pay the privilege tax.

SECTION 7. For the exercise of the privilege described herein, the City of Piperton in imposing a tax on new development may develop a tax rate schedule by which residential and

non-residential uses are classified by type for the purpose of imposition of the tax authorized herein.

SECTION 8. The tax established in this act shall be collected at the time of application for a building permit for development as herein defined by a municipal official duly authorized by the governing body. If the building permit is issued by the City of Piperton, the municipal building official or other responsible official shall receive payment in full in cash or other negotiable instrument as specified by the ordinance of the municipality and as approved by the municipal attorney. If the building permit is issued by the county, the county shall, before issuance of the building permit, require evidence by a valid certificate executed by the municipal building inspector that the full amount of the tax due the municipality has been paid. No building permit for development as herein defined shall be issued unless the tax has been paid in full to the municipality or a negotiable instrument approved by the municipal attorney and payable to the municipality has been received. The issuance of a building permit by any county official, without a certificate from the municipality that the tax has been paid shall render the county liable to the municipality for the sum or sums that would have been collected by the municipality, had the certificate of tax paid been required by the county.

SECTION 9. All tax funds collected shall be used for the purpose of providing public facilities, the need for which is reasonably related to new development.

SECTION 10. The authority to impose this privilege tax on new development in the City of Piperton is in addition to all other authority to impose taxes, fees, assessments, or other revenue-raising or land development regulatory measures granted either by the private or public acts of the State of Tennessee and the imposition of such tax, in addition to any other authorized tax, fee, assessment or charge, shall not be deemed to constitute double taxation.

SECTION 11. Any person aggrieved by the decision of the municipal building official or other responsible official concerning any aspect of this act may obtain review of the official's decision in the following manner:

(1) By payment of the disputed amount to the City of Piperton and by notifying the official that the payment is made under protest; and

(2) By requesting an appeal of the decision of the official in written form within ten (10) days of the protest and payment. Appeals shall be heard by the governing body. A hearing shall be scheduled within forty-five (45) days of the written request for appeal.

The governing body shall render a decision on all hearings within thirty (30) days of the hearing date, unless the hearing is continued from time to time by a majority vote of the governing body for further information.

The governing body shall act as a quasi-judicial body whose purpose is to determine the intent of the act, its applicability to the appellant, and to rule upon the interpretation of the official. The governing body shall not be bound by formal rules of evidence applicable to the various courts of the state.

Hearings before the board shall proceed as follows:

(1) The building official shall explain his or her ruling and the reasons for the ruling.

(2) The appellant shall explain his or her reasons for protesting the ruling.

(3) The board may request further information from any municipal official. The board will not have the power of subpoena.

(4) The governing body will deliberate and render a decision by a majority vote. Decisions will be reduced to writing and copies shall be sent to all parties and shall become a part of the minutes of the governing body. Decisions of the governing body shall be final, except that either the building official, or the person aggrieved may seek review of the governing body's actions by certiorari and supersedeas to the chancery court of Fayette County, Tennessee, provided that an application to the court is made within sixty (60) days of the written decision of the governing body.

SECTION 12. The provisions of this act shall in no manner repeat, modify or interfere with the authority granted by any other public or private law applicable to the City of Piperton. This act shall be deemed to create an additional and alternative method for the City of Piperton to impose and collect taxes for the purpose of providing public facilities made necessary by new development in the municipality.

SECTION 13. If any provisions of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 14. This act shall have no effect unless it is approved by a two-thirds (2/3) vote of the municipal legislative body of the City of Piperton. Its approval or nonapproval shall be proclaimed by the presiding officer of the municipal legislative body and certified to the Secretary of State.

SECTION 15. For the purpose of approving or rejecting the provisions of this act, it shall be effective upon becoming a law, the public welfare requiring it. For all other purposes it shall become effective upon being approved as provided in Section 14.